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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/141,286	05/08/2002	Jeffrey T. Kohli	ADP-122RE	9323

7590

09/09/2003

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EXAMINER

STEIN, STEPHEN J

ART UNIT

PAPER NUMBER

1775

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/141,286

Applicant(s)

KOHLI, JEFFREY T.

Examiner

Stephen J Stein

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21, 24, 31 and 40-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21, 24, 31 and 40-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-21, 24, 31 and 40-63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,319,867. Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositional components of the glass claimed in the '67 patent overlaps with claimed glass in the instant application.

4. Claims 1-21, 24, 31 and 40-63 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6, 8-16, 18-25 and 30-81 of copending Application No. 09/990,750. Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositional components of the glass claimed in the '750 application overlaps with claimed glass in the instant application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. Claims 50-53 and 59-63 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,244,847 (Kushitani et al.).

Kushitani teaches an alkali free glass composition for various displays comprising:

60 wt %	SiO <sub>2</sub>
17 wt %	Al <sub>2</sub> O <sub>3</sub>
4 wt %	B <sub>2</sub> O <sub>3</sub>
0 wt %	SrO
11 wt %	CaO
0 wt %	BaO
8 wt %	MgO
0.0 wt %	SrO + BaO
19.0 wt%	MgO + CaO + SrO + BaO

Strain Point = 675 °C

(See Tables 1 and 2, Sample 9).

With regard to the limitation of the CTE, while it is noted that Example 9 does disclose that the Thermal expansion coefficient is  $44 \times 10^{-7}/^{\circ}\text{C}$ , there is no temperature range disclosed for this particular CTE value, therefore it is presumed that the disclosed composition will have a CTE value within the claimed range for the claimed temperature range, since the reference discloses a composition within the claimed ranges. It has been held that where the claimed and

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prior art products are identical or substantially identical in structure or are produced by identical or a substantially identical processes, a prima facie case of either anticipation or obviousness will be considered to have been established over functional limitations that stem from the claimed structure. *In re Best*, 195 USPQ 430, 433 (CCPA 1977), *In re Spada*, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). The *prima facie* case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed products. *In re Best*, 195 USPQ 430, 433 (CCPA 1977). With regard to the process limitations recited in the claims, process limitations in product claims are generally not dispositive on patentability unless it is shown that the process limitations produce a materially different product. MPEP §2113.

### ***Response to Arguments***

6. With regard to the rejections to claims over the Nakao, the Machishita and Miwa references, applicant's arguments have been deemed persuasive and the rejections have been withdrawn.

With regard to the rejections made over the Miwa reference, applicant has provided a declaration filed under 37 CFR 1.132 in which it is asserted that experiments have been made and that a CTE for a particular temperature range can be transformed for a different temperature by applying an offset. In the affidavit, the affiant stated that experiments were made on Corning 1737 and the particular CTE offsets were determined for different temperature ranges. The affiant further stated that he believed that the offsets determined for the Corning 1737 glass composition "should be applicable to the other LCD glass compositions which use SiO<sub>2</sub>, and Al<sub>2</sub>O<sub>3</sub> as glass formers and MgO, SrO, and/or BaO as modifiers".

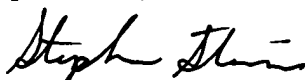
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This argument has been considered, but not deemed persuasive. The affidavit does not provide evidence as to the temperature offsets for the Asahi glass composition in the Kushitani reference. This affidavit provides evidence only with respect to Corning glass 1737 and only provides conjecture that the disclosed glass in Kushitani would not inherently have the claimed CTE value over the particular temperature range. Therefore, the rejections based on this reference are still deemed proper and have been applied to new claims 50-53 and 59-63.

*Conclusion*

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Stein whose telephone number is (703) 305-0583. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m. If the attempts to reach the examiner are unsuccessful, the examiner's supervisor, Deborah Jones can be reached by dialing (703) 308-3822. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose phone number is (703) 308-0661. The fax phone number for this group is (703) 872-9310 for non-final responses and (703) 872-9311 for after final responses.

September 7, 2003

  
Stephen J. Stein